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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/945,255 | 08/31/2001 | Nobuhiro Funasako | 1872/0J700 | 1960 |

7278 7590 08/25/2004

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P. O. BOX 5257
NEW YORK, NY 10150-5257

EXAMINER

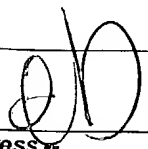
JUSKA, CHERYL ANN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1771

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|-----------------|---|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/945,255 | FUNASAKO ET AL. | |
| | Examiner | Art Unit |  |
| Cheryl Juska | 1771 | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed May 28, 2004, has been entered. New claim 10 has been added. Thus, the pending claims are claims 6-10.
2. Applicant's arguments presented with said amendment are sufficient to overcome the prior art rejection based upon JP 02-111372 issued to Fikushima, as set forth in section 3 of the last Office Action. Specifically, as argued by applicant (Amendment, page 6-7), one would not be properly motivated to substitute a multifilament fabric for the tape monofilament fabric of Fikushima. However, an updated search of the prior art has produced the new ground of rejection set forth below. Additionally, the indication of allowable subject matter for claim 7 is hereby withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 8, and 9 are rejected under 35 USC 103(a) as being unpatentable over US 4,123,577 issued to Port et al. in view of US 4,658,739 and US 4,841,886, both issued to Watkins.

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Port discloses an improved primary backing for tufted carpets comprising a fabric to which a web of blended fibers is heat fused (abstract). In one embodiment, the fabric is a woven fabric of multifilament yarns (col. 4, lines 60-65). When employed in fine gauge tuft carpets, said multifilament primary backing has a layer of thermoplastic fibers heat fused thereto (col. 4, line 65-col. 5, line 2).

Thus, Port teaches applicant's claimed tufted carpet having a primary backing of multifilament warp and wefts and a binding resin (i.e., the fused thermoplastic fibers) partially fixing said multifilaments to each other. Additionally, Port teaches a needle gauge of less than 1/10 inch (i.e., fine gauge tufting).

Port fails to teach the claimed pile pattern. However, said pattern is known in the art. For example, Watkins '739 teaches an apparatus for tufting a carpet comprising a staggered needle tufting machine (abstract). Additionally, Watkins '886 teaches an apparatus for tufting a carpet having the pattern shown in Figure 9 (col. 8, lines 8-17). Thus, it would have been obvious to one of ordinary skill in the art to employ the tuft pattern of Watkins in the tufted carpet of Port with the expectation of producing a decorative tufted carpet having a flexible, yet dimensionally stable primary backing.

With respect to the claimed yarn denier (dtex), it is asserted that this limitation is obvious over the prior art. Specifically, the claimed denier range is well known in the art of carpet. Applicant is hereby given Official Notice of this fact. [Note applicant did not traverse this point in response to the last Office Action.] Thus, it would have been obvious to one of ordinary skill in the art to select the claimed denier in order to produce a quality carpet pile. Therefore, claims 6, 8, and 9 are rejected.

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5. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Port reference in view of US 4,557,208 issued to Ingram et al.

Port fails to teach the claimed two to five weft yarns between the tufted piles. However, it is known in the art to tuft yarns with more than one weft yarn spaced between adjacent tufts. For example, Ingram discloses a tuft pattern wherein the width of the tuft backstitches vary within a row of tufts (abstract and Figures 6 and 7). As such, the number of yarns between adjacent tufts will inherently vary. Thus, it would have been obvious to one skilled in the art to manipulate the width of the tuft backstitches in Port to include more than 1 (e.g., 2-5) weft yarns between each tufts. Determination of the number of weft yarns is dependent upon the fineness of the tuft gauge and the fineness of the weft yarns of the primary backing. Accordingly, it would have been obvious to one skilled in the art to manipulate these factors to create specific tuft patterns and designs. Therefore, claims 7 and 10 are rejected as being obvious over the cited prior art.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
August 22, 2004